

BILL ANALYSIS

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Date of Hearing: May 14, 1997

ASSEMBLY COMMITTEE ON JUDICIARY
Martha Escutia, Chairwoman

AB 913 (Runner) - As Amended: April 21, 1997

SUBJECT : DISSOLUTION OF MARRIAGE: WAITING PERIOD.

KEY ISSUES :

- 1) SHOULD THERE BE A 90-DAY WAITING PERIOD AFTER FILING A PETITION FOR DISSOLUTION OF MARRIAGE, AFTER WHICH A SECOND PETITION MUST BE FILED?
- 2) IN ADDITION TO THE 90-DAY WAITING PERIOD, SHOULD THE PETITIONER BE REQUIRED TO SUBMIT A PROPOSED PARENTING PLAN WITH THE SECOND PETITION?
- 3) IN ADDITION TO THE 90-DAY WAITING PERIOD, SHOULD THE RESPONDENT BE REQUIRED TO SUBMIT A PROPOSED PARENTING PLAN WHEN THE RESPONSE IS FILED?
- 4) SHOULD THE COURT PROVIDE ALTERNATIVES TO COURT ACTION FOR PARENTING PLAN DISPUTES, AND SHOULD PREFERENCE BE GIVEN TO CARRYING OUT THE TERMS OF THE PARENTING PLAN?
- 5) SHOULD THE PARENTING PLAN DESIGNATE WHERE EACH CHILD MUST RESIDE ON HOLIDAYS, FAMILY MEMBERS' BIRTHDAYS, VACATIONS, AND OTHER SPECIAL OCCASIONS?

SUMMARY : Seeks major changes in many existing dissolution of marriage and other provisions in the Family Code, including the creation of a 90-day "cooling off" period before dissolution may be petitioned. Specifically, this bill :

- 1) Requires the filing of two petitions for dissolution. The second petition may not be filed until 90 days after the date of service on the respondent of the first petition.

- 2) Requires that the petitioner must submit a proposed parenting plan with the second petition if there are minor children of the marriage.
- 3) Provides that the respondent has 30 days to answer the second petition. The respondent must submit a proposed parenting plan to the court with this answer.
- 4) Establishes the components of a permanent parenting plan, which must include, among other things, a residential schedule that designates in which parent's home each minor child shall reside on given days, including holidays, birthdays of family members, and vacations.
- 5) Requires the court to provide alternatives to court action for resolving disputes regarding the permanent parenting plan.

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The alternative dispute resolution process must give preference to carrying out the permanent parenting plan. Either parent may appeal for court review of the resolution process.

- 6) Provides that if a parent fails to comply with a permanent parenting plan or child support order, the parent failing to comply may be held in contempt of court.
- 7) Prohibits the court from intervening in a parenting plan as long as both parents cooperate with each other.
- 8) Permits the court to intervene in a case where the court finds that a parent: (a) has engaged in abuse or neglect of the child; (b) demonstrates impairment of parental judgment from drug, alcohol or other substance abuse; or (c) withholds access of the child from the other parent.
- 9) Requires the court to issue a restraining order against a

parent who is convicted of an offense requiring registration under Penal Code section 290, or is found to be a sexually violent predator.

10) Provides that jurisdiction to modify a permanent parenting plan must be in the county where the child resides, in the court where the final judgment was entered, or in the county where the parent has the care and custody of the child.

11) Provides that if there are no minor children, a mediation plan must be submitted by each party within 30 days after the filing of the answer.

12) Eliminates the need for the filing of a second petition if the court determines there is a history of abuse by a party to the marriage. A "notice of high risk" form must be signed under penalty of perjury by the petitioner and submitted at the time of filing of the first petition.

13) Authorizes the court to order an evaluation or counseling if it determines that it is in the best interest of the marriage, family or minor child to provide a time for evaluation. The parties may choose their own counselor. The counselor must have a recognized license and education and may be a pastoral leader who has expertise in this type of counseling. If the parties do not agree or cannot afford counseling, the court shall appoint a mandated court counselor. The court must also review all evaluations or recommendations of the counselor, and may extend the time period for proceedings for the dissolution of the marriage.

EXISTING LAW :

1) Establishes the Family Law Act (Family Code Sections 300 et seq.) which eliminates "fault" actions for divorce, annulment and maintenance, and substitutes "no-fault" proceedings for dissolution, legal separation, or nullity of marriage.

2) Governs California's dissolution procedures via the Judicial Council's Family Law Rules (Cal. Rules of Court, Rule 1201 et seq.). The summons, prescribed by Rule 1283 (Form No. 1283), contains the following notice:

"You have 30 CALENDAR DAYS after this Summons and Petition are served on you to file a Response (form 1282) at the court and serve a copy on the petitioner. A letter or phone call will not protect you.

"If you do not file your Response on time, the court may make orders affecting your marriage, your property, and custody of your children.
You may be ordered to pay support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form.

"If you want legal advice, contact a lawyer immediately."

3) Provides two "no fault" grounds for divorce as follows:

"Dissolution of the marriage or legal separation of the parties may be based on either of the following grounds, which shall be pleaded generally:

a) Irreconcilable differences, which have caused the irremediable breakdown of the marriage.

b) Incurable insanity. (Family Code Section 2310. All references are to the Family Code unless noted).

4) Requires that each superior court make a mediator available to the parties.

5) Establishes that the purposes of mediation are to: (a) reduce acrimony between the parties; (b) develop an agreement assuring the child's close and continuing contact with both parents that is in the best interest of the child; and (c) effect a settlement of the issue of visitation rights of the parties that is in the best interest of the child.

6) Requires the court to set any contested issues of custody and visitation for mediation. The mediation must occur prior to

the court hearing.

- 7) Requires the mediator to assess the needs and interests of the child involved in the controversy. The mediator must use his or her best efforts to effect a settlement of the dispute that is in the best interest of the child.
- 8) Authorizes either party to a marriage to file a petition in conciliation court invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties. (Section 1831) If a

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petition is filed for conciliation, neither spouse may file a petition for dissolution until 30 days after the hearing of the petition for conciliation. There is no filing fee for the petition.

- 9) During the pendency of the dissolution, permits the court to order counseling if a dispute between the parents or between the child and a parent poses a substantial danger to the best interest of the child, and counseling is in the best interest of the child.
- 10) Establishes that the purpose of counseling is to facilitate communication between the parties, to reduce conflict regarding custody or visitation, and to improve the quality of parenting skills of each parent.
- 11) Provides that the court may order separate counseling in cases with a history of abuse.

FISCAL EFFECT : Unknown.

COMMENTS : According to the sponsor, Capitol Resource Institute (CRI), "(T)he existing 'No fault' divorce laws have increased the prevalence of divorce and greatly affected our society and our children." CRI believes that

only towards the end of the dissolution process are parties required to work on parenting, custody, support and other issues affecting children. CRI states that this bill adds a time period up front, in the nature of a 90-day "cooling off" period to allow parties to begin working on issues regarding their minor children in order to "think twice" in considering the children's best interests. The sponsor's goal is to make the acquisition of a divorce in California more difficult to keep families together and reduce problems associated with the current "divorce epidemic," including childhood poverty, poor school performance, and increased criminal activity.

CRI states that this bill gives judges more discretion to mandate a period for marriage or family counseling, which may help the family or the marriage. According the CRI: "When California adopted the nation's first no-fault divorce law in 1970, the initiative set off a domino effect of divorce reform throughout the country.... We want to protect children and make marriage important again to our society. Our State of California has a vested interest in the marital contract."

To this end, this legislation would require two separate dissolution petitions be filed for a dissolution of a marriage and specify that the second petition could be filed no sooner than 90 days after service of the first petition unless the case involves a history of drug abuse or a high risk of abuse. It further establishes a "notice of high risk" procedure.

Proponents' Arguments : The Committee on Moral Concerns supports this bill, stating:

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"It is [our] long-held belief ... that marriage should be a lot harder to enter and much harder to exit. Quick marriages and no-fault divorces have led to a societal attitude that marriage is little more than a convenient tax dodge. Family breakdown is one of the two leading causes of most of the problems our

society faces. (Substance abuse is the other cause, and it is inter-related to divorce.) The seriousness of marriage and its importance to the nation's ultimate welfare must be re-established."

Opponents' Arguments : The Judicial Council (JC) opposes this bill unless it is substantially amended. It highlights the following problems with the bill:

- 1) The two-step filing process would add a significant burden to court clerks because, in practical effect, this bill would double the time involved in processing the initial dissolution filing.
- 2) The provisions on developing and resolving disputes over proposed parenting plans create confusion and conflict with existing court-connected mediation services provided through family court services.
- 3) Requiring each parent to submit a plan in writing is inconsistent with the goal of a mediation process. Submitting a proposed plan tends to lock a parent into a position, and makes the process of determining the child's best interest and working toward a negotiated agreement more difficult.
- 4) The responsibility for the evaluations under the high risk procedure is unclear. This bill calls for an evaluation report to be completed within 10 days after the filing of the notice of high risk. If the family court services offices are to be responsible, the workload increase in this area would be staggering."

Other Issues : In addition to the pertinent concerns raised by the JC above, several other substantial ambiguities or conflicts with California's current Family Code provisions may be foreseen with this well-intentioned legislation, including:

- 1) Is there any evidence that a three-month "cooling off" period before a dissolution action may proceed will achieve the author's desired result of actually reducing the number of divorces in California?
- 2) Will requiring the petitioner to be the author of a proposed parenting plan when he or she files a second dissolution petition actually cause greater acrimony and conflict between

the parties rather than less?

- 3) Do the proposed "permanent" parenting plan provisions conflict with current custody and visitation provisions in the Family Code, and how would these provisions affect existing case law

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on custody and visitation?

- 4) How much more frequently will family courts hold parents in contempt under this bill?
- 5) How do the bill's provisions affect recent "move-away" case law by the Supreme Court?
- 6) How will the "notice of high risk" procedures under the bill affect current law pertaining to child and spousal abuse?
- 7) How do the bill's proposed mediation and evaluation provisions interact with current law? Why expand the range of persons who can provide mediation services to the alternative dispute resolution community, when mediators are already regulated by rule of court? Who will pay for any alternative dispute resolution ordered, as well as any counseling?
- 8) Are a spouse and the children entitled to temporary support during the 90-day "cooling off" period if one of the spouses moves out of the family home during this time?
- 9) Will children actually receive better parental care and attention under this bill, or will their interests (i.e., temporary child support) be lost or subsumed during the 90-day "cooling off" period?

Possible Committee Action : This legislation proposes a plethora of major reforms to California's divorce and mediation laws with the well-intentioned objective of helping children through the divorce process. Because of the breadth of the proposed changes,

and the uncertainty of their likely effects, the committee may wish to consider having an interim hearing to review these and other proposed reforms to the state's family law system.

REGISTERED SUPPORT / OPPOSITION :

Support

Opposition

Capitol Resource Institute (sponsor) Judicial Council
Committee on Moral Concerns

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